

Luo (Migration) [2019] AATA 4215 (16 August 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Ms Shanshan LUO
CASE NUMBER:	1703374
DIBP REFERENCE(S):	BCC2015/1749704
MEMBER:	Mireya Hyland
DATE:	16 August 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 820 visa: • cl.820.221(3) of Schedule 2 to the Regulations

Statement made on 16 August 2019 at 4:42pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – relationship ceased – family violence – non-judicially determined claim – evidential requirements – independent expert’s opinion – relevant family violence occurred during the relationship – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), rr 1.21, 1.22, 1.23, 1.24, 1.25; Schedule 2, cls 820.211, 820.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 14 February 2017 to refuse to grant the applicant, Shanshan Luo, a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. Ms Luo applied for the visa on 18 June 2015 on the basis of her relationship with her sponsor, Mr Wenbo Zhang. At that time, Class UK contained one subclass: Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). Relevantly, the primary criteria include 820.221 which requires that the applicant be the spouse of the sponsor unless the relationship has ceased and certain circumstances exist. These include that the applicant has suffered relevant family violence committed by the sponsor: cl.820.221(3)(a) and (b)(i).
4. In the present case, Ms Luo claims her relationship with Mr Zhang has ceased and she has been the victim of relevant family violence.
5. Ms Luo appeared before the Tribunal, differently constituted, on 9 September 2018 to give evidence and present arguments. Ms Luo was assisted at the hearing by an interpreter in the Chinese (Mandarin) and English languages. She was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing. The Tribunal has listened to the audio of the hearing and has considered that evidence when making its decision.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. In October 2013, Ms Luo and Mr Zhang started communicating online and in July 2014 they met in person in Hong Kong. In December 2014, Ms Luo first entered Australia as the holder of a Class FA Visitor (Subclass 600) visa that ceased on 5 March 2015. She lived with Mr Zhang, his mother, and his sister in a one-bedroom apartment in Canberra and departed Australia on 9 February 2015. On 17 March 2015 Ms Luo was granted a further Class FA Visitor (Subclass 600) visa and arrived in Australia on 27 March 2015. On 16 May 2015, she married Mr Zhang and they lived together with Mr Zhang's mother and sister in the one-bedroom apartment at [Address 1] in the Australian Capital Territory. In April 2016, Ms Luo briefly moved out of the apartment following an argument with Mr Zhang's mother over their living arrangements. She returned to the apartment after her mother- and sister-in-law moved out and the couple lived there together until the relationship came to an end after the 29 June 2018 incident (see below).

Did Ms Luo Meet the Requirements of Subclause 820.211(2)

8. Clause 820.221 requires that the applicant would continue to meet the requirements of subclause 820.211(2) except that the relationship between the applicant and the sponsoring partner has ceased: cl.820.221(3)(a). Relevant to this matter, cl.820.211(2)(a) requires that at the time when the visa application was made the applicant was the spouse of an Australian citizen. Ms Luo claims that on 18 June 2015 when the application was lodged she was the spouse of Mr Zhang who is an Australian citizen: cl.820.211(2)(a)(i). Also, the sponsor must not be prohibited by cl.820.211(2B) from being a sponsoring partner: cl.820.211(2)(a)(ii). Since Mr Zhang was not a woman granted a Subclass 204 (Woman at

Risk) visa within the five years immediately preceding the application, he was not prohibited from being Ms Luo's sponsoring partner: cl.820.211(2B)(a).

9. 'Spouse' is defined in s.5F of the Act and requires the parties to be married under a marriage valid for the purposes of the Act. There also must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together or not live apart permanently: s.5F(2)(a)-(d) of the Act. In forming its opinion the Tribunal must consider evidence of the financial and social aspects of the relationship, and the nature of the couple's household and commitment to each other: r.1.15A(3). Each of these specific matters are effectively questions which must be answered¹ and the Tribunal has considered and satisfied itself about each.
10. The Tribunal has viewed Ms Luo's and Mr Zhang's marriage certificate and finds that they were married to each other on 16 May 2015 under a marriage that is valid for the purposes of the Act. They met s.5F(2)(a) of the Act.
11. Based on all the evidence as a whole, including the evidence in support of the relationship, the police, court, and other documentation supporting the family violence claim, and the independent expert's findings about the nature of the abuse in their relationship, the Tribunal is satisfied, in the circumstances, that the financial aspects of the relationship, nature of the household, social aspects of the relationship, and nature of their commitment supports that Ms Luo was in a genuine relationship with Mr Zhang: r.1.15A(3). It appreciates the difficulty in acquiring any additional evidence to prove the genuineness of a relationship once the relationship has ended in violence and there is no evidence before it to the contrary. Viewing the evidence with that in mind, it is satisfied that Ms Luo and Mr Zhang had a mutual commitment to a shared life to the exclusion of all others, were in a genuine and continuing relationship, and live together at [Address 1] in the Australian Capital Territory. They met the requirements in s.5F(2)(b), (c), and (d) of the Act. Given these findings it finds that the requirements of s.5F(2) were met at the time of application and Ms Luo was the spouse of Mr Zhang.
12. Ms Luo was sponsored by Mr Zhang who had turned 18 years of age and so cl.820.211(2)(a) and (c) were met at the time of application. The Tribunal is satisfied that on 17 March 2015, Ms Luo was granted a Class FA Visitor (Subclass 600) visa that ceased on 27 June 2015 so she was the holder of a substantive visa on 18 June 2015 and cl.820.211(2)(d) is not engaged. It finds that at the time of application Ms Luo met the requirements in cl.820.211(2) of the Regulations.

Does Ms Luo Meet the Requirements of Subclause 820.221(3)

13. Ms Luo claims that she does not meet the requirements of cl.820.221(1)(a) because she does not continue to meet the requirements of cl.820.211(2) at the time of this decision. She claims, and the Tribunal accepts, that her relationship with Mr Zhang has ceased. At the time of this decision Ms Luo would have continued to meet cl.820.211(2)(a) and (c) had the relationship not ceased, that is, Mr Zhang is an Australia citizen over the age of 18 and Ms Luo remains married to him and would have been his spouse. There is no evidence before the Tribunal on which it can base a finding that she would not have continued to be Mr Zhang's spouse if family violence had not ended the relationship. The Tribunal cannot test Ms Luo's evidence against her husband's because it is unable to take evidence from Mr Zhang. Ms Luo's evidence has been generally consistent and is consistent with the police and court documentation. The Tribunal is cognisant of the difficulty in proving that a relationship would have continued if it had not ended, particularly when it has ceased due to violence. Given there is no obvious impediment to Ms Luo's credibility or clear cause why

¹*He v MIBP* [2017] FCAFC 206.

the relationship would have ended (other than the violence), the Tribunal has no reason not to believe Ms Luo when she says the relationship would have continued. It finds that Ms Luo meets cl.820.221(3)(a) of the Regulations.

14. Relevant to this case, to meet cl.820.221 where the relationship has ceased, the applicant must have suffered family violence committed by the sponsoring partner: cl.820.221(3)(b). Regulation 1.23 sets out when a person is taken to have suffered or committed family violence. An applicant is taken to have suffered family violence if evidence has been tested before a court and a relevant order made or if the visa application includes a non-judicially determined claim of family violence, and either the Tribunal is satisfied that the applicant has suffered 'relevant family violence' or an independent expert has given an opinion that the applicant has suffered 'relevant family violence'. 'Relevant family violence' is defined in r.1.21 of the Regulations as conduct, whether actual or threatened, towards an alleged victim or his or her property that causes him or her to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety. At least part of the relevant family violence must have occurred during the married or de facto relationship: r.1.23(3), (5), (7), (12), (14) of the Regulations.
15. In the present case, Ms Luo is seeking to establish family violence on the basis of a non-judicially determined claim of family violence.

Has a Claim of Family Violence Been Made Under the Regulations?

16. Under r.1.23, a visa application is taken to include a non-judicially determined claim of family violence where the applicant is the spouse of the perpetrator and either a joint undertaking to a court has been made by the applicant and sponsor or evidence in accordance with r.1.24 is provided. Ms Luo is seeking to rely on evidence referred to in r.1.24, that is, a statutory declaration made under r.1.25 and a minimum of two items of evidence from the list in Schedule 1 to the Minister's instrument in writing for r.1.24: see IMMI12/116. A statutory declaration under r.1.25 means a statutory declaration under the *Statutory Declarations Act 1959*. The evidence in r.1.24 must set out that the applicant has suffered relevant family violence and that the spouse or de facto partner committed that relevant family violence.
17. In this case the statutory declaration under r.1.25 must be made by the applicant. It must set out the allegation of family violence and name the person alleged to have committed the relevant family violence: r.1.25(2). On 19 September 2018, the Tribunal received a statutory declaration by Ms Luo dated 7 September 2018 and witnessed by a Justice of the Peace. The statutory declaration set out the family violence particularised below and named Mr Zhang as the perpetrator. The Tribunal is satisfied that Ms Luo has provided a statutory declaration in accordance with the *Statutory Declarations Act 1959* under r.1.25 as required by r.1.24(a) of the Regulations.
18. Ms Luo provided the Tribunal with a report made on 4 July 2019 by a police officer of the Australian Federal Police in the Australian Capital Territory. The report identifies Ms Luo as the victim and Mr Zhang as the perpetrator of an incident of family violence which occurred on 29 June 2018. While the name of the perpetrator was redacted under the *Freedom of Information Act 1982*, the report refers to him as being Ms Luo's husband and states the parties reside together in Lyons, ACT. Therefore, the Tribunal is satisfied that the report identifies Mr Zhang as the perpetrator. The Tribunal also received a letter dated 7 August 2018 from the Domestic Violence Crisis Service ('DVCS') in the Australian Capital Territory on the organisation's letterhead. The letter states that Ms Luo made a claim of family violence and identifies Mr Zhang as the perpetrator. It can be inferred from the evidence set out in the letter that it states Ms Luo was subject to family violence. It details DVCS' engagement with Ms Luo after Mr Zhang's arrest for physically assaulting her and its support in obtaining a Family Violence Order preventing contact, as well as its ongoing assistance

with the criminal matter (which included Mr Zhang's sentencing), safety planning, and counselling. The Tribunal is satisfied that Ms Luo has provided two pieces of evidence from the list in Schedule 1 to IMMI12/116 that contain the details prescribed in that instrument as required by r.1.24(b) of the Regulations.

19. Therefore, the evidence presented meets the requirements of r.1.24. As such, a non-judicially determined claim of family violence has been made under r.1.23.

Has Ms Luo Suffered Family Violence?

20. Pursuant to r.1.23(10)(a), if an application for a visa includes a non-judicially determined claim of family violence the Tribunal must consider whether the applicant has suffered relevant family violence. The Tribunal, differently constituted, considered all of the evidence provided by Ms Luo about her claims. It then invited her to a hearing and gave her an opportunity to give evidence and present arguments in relation to those claims. After listening to the audio of that hearing and considering all the documentary evidence, the Tribunal could not be satisfied for the purposes of r.1.23 that Ms Luo suffered the 'relevant family violence' as defined in the Regulations.
21. Regulation 1.23(10)(c)(i) requires that if the Tribunal is not satisfied that the applicant has suffered the relevant family violence it must seek the opinion of an independent expert about whether the applicant has suffered the relevant family violence. Therefore, in accordance with that regulation, the Tribunal sought the opinion of an independent expert. 'Independent expert' is defined in r.1.21 as meaning a person who is: (a) suitably qualified to make independent assessments of non-judicially determined claims of family violence; and (b) provides services for an organisation specified in a legislative instrument made by the Minister: see IMMI13/023. LSC Psychology is an organisation specified by IMMI13/023 for the purposes of r.1.21 of the Regulations.
22. On 13 May 2019, the Tribunal referred Ms Luo to LSC Psychology. On 22 July 2019, the Tribunal received the opinion of Dr Emma Collins (DPsych (clinical) BSc Psych Hons MAPS FCCLP FCFP), an LSC Psychology Director. In light of her qualifications, the Tribunal is satisfied that she is suitably qualified to make independent assessments of non-judicially determined claims of family violence. The independent expert provided an opinion that Ms Luo has suffered relevant family violence. She states that in her capacity as an independent expert, she has assessed the claims of relevant family violence described by Ms Luo and in her opinion relevant family violence that causes Ms Luo to reasonably fear for, or to be reasonably apprehensive about, her own personal wellbeing or safety actually occurred to Ms Luo. The independent expert provided the following reasons for her opinion.

Background in the Independent Expert's Report

23. According to the independent expert's report, during the relationship Ms Luo observed Mr Zhang displaying odd behaviours related to noise he said was being made by the neighbours. Mr Zhang often asked her if she could hear the neighbours, which she told him she could not. He would become angry and punch her around the shoulders and chest area until she said that she had heard the noises. Mr Zhang would then stop hitting her and say words to the effect of 'see, you did hear it.' These incidents lasted a few minutes at a time and were unpredictable. Ms Luo told the independent expert that on one occasion when Mr Zhang was punching her in the chest area while asking about the noises, he also punched her nose making it bleed and kicked her in the stomach when she was in the early stages of pregnancy. She went to a neighbour who took her to the police station, but she refused to go in. She terminated the pregnancy. Ms Luo said that in the early stages of the marriage, Mr Zhang apologised and treated her nicely following these incidents. Ms Luo noted that his mental health worsened during a holiday to China, and she believed that the noise and bustle is what caused the decline.
24. When Ms Luo approached Mr Zhang's mother and expressed concern about his wellbeing, she said not to worry, it was probably a result of Mr Zhang losing his job (which occurred prior to Ms. Luo's arrival), and he was under stress. Ms Luo also reported that on one occasion she witnessed Mr Zhang hitting his mother, which made her feel increasingly scared about his unpredictability. When Ms Luo told her mother-in-law about the physical violence, she minimised the conduct, simply advising Ms Luo to stay away from him. Ms Luo told her own family and her mother suggested that she end the relationship, but she refused to consider this at the time because Mr Zhang provided her with the sense of family she lacked from her own family as a result of her father abandoning her as an infant.
25. Ms Luo told the independent expert that Mr Zhang's mental state worsened after he was involved in a car accident in around April 2017. He was hospitalised and admitted into a psychiatric facility due to hallucinations and delusions that others were trying to kill him. On 4 May 2017 the Australian Capital Territory Civil and Administrative Tribunal made a Psychiatric Treatment Order under s.58(2) of the *Mental Health Act 2015* that Mr Zhang must comply with any determination made by the Chief Psychiatrist or delegate under s.62 of that Act. Ms Luo told the independent expert that Mr Zhang disputed his diagnosis and had no insight into his condition. Despite her concerns about his mental health, he persuaded Ms Luo that the treatment was a mistake and she reluctantly agreed because his admission to hospital had been in relation to physical health issues from the accident.
26. Ms. Luo discussed with the independent expert the incident that led to her leaving the marital home. On 29 June 2018, she woke up and heard Mr Zhang talking to someone in his native dialect. He was saying that he was going to kill her. Mr Zhang then entered the bedroom and picked up Ms Luo's phone, moving it away from her. She saw that he was holding a long kitchen knife. Mr Zhang grabbed Ms Luo and, holding her down, began hitting her head with the blunt edge of the knife. Ms Luo told the independent expert that Mr Zhang told her that he would stab her if she called for help. He put the knife down and continued to hit her, then began choking her before hitting her again with the knife. Mr Zhang told Ms Luo that he had to hit her or his life was in danger. He then went to sleep with the knife next to him. Ms. Luo waited until daylight then told the sponsor that she was going shopping and left the marital home. She went to Westfield Shopping Centre and spent the day there before calling her friend to ask if she could stay. She went to her friend's home when her friend finished work. Ms. Luo returned to the marital home a few days later to collect some belongings. She told the independent expert that for safety she was on the phone to her friend who was waiting outside. Mr Zhang was at the home. He asked why she had come back since she had left the relationship and told her to leave. She gathered some belongings and left the property.

27. Ms. Luo told the independent expert that her friend persuaded her to go to the police and she reported the incident on 4 July 2018. A family violence protection order was sought and a hearing was held on 11 July 2018. Mr Zhang reportedly disputed that he perpetrated any violence on Ms Luo, but an interim order was executed. On 2 February 2019 Mr Zhang was convicted of an unknown offence (the independent expert presumes is relates to the 29 June 2018 assault) and sentenced on 12 February 2019 to a two-year good behaviour bond with supervision by Corrections for an 18-month period. Documentation from the Magistrates Court advised that there was a final hearing for the protection order listed for 6 August 2019. Ms Luo advised the independent expert that other than the Court proceedings, she has had no further contact with Mr Zhang and at the time of the independent expert interview felt protected by the interim family violence order in place.

Findings on Physical Abuse in the Independent Expert's Report

28. The independent expert found that there was both actual and threatened physical abuse perpetrated against Ms Luo by Mr Zhang. In her opinion relevant family violence that caused Ms Luo to reasonably fear for or to be reasonably apprehensive about her own personal wellbeing or safety has occurred. Considering the combination of contemporaneous evidence, Ms Luo's account, and her presentation at the independent expert's interview, it is the independent expert's opinion that Mr Zhang's physical violence towards her caused her to reasonably fear for, or to be reasonably apprehensive about, her own personal wellbeing and safety.
29. The independent expert found that Mr Zhang's violence escalated over time including hallucinations and delusions that initially related to noise from the neighbours. Mr Zhang hit Ms Luo if she did not confirm the noises he heard and so she learned to agree when he asked her if she heard the neighbours, for example. Ms Luo witnessed him assaulting his mother on one occasion when they all lived together, which made her scared of his potential for violence, but from April 2016 Ms Luo and Mr Zhang lived in the apartment alone. On one occasion when Ms Luo was pregnant he impulsively began kicking her in the stomach and punched her nose, but she was too scared to tell the police. Mr Zhang's mental state significantly deteriorated following a car accident and he was admitted to a psychiatric facility due to the presence of hallucinations and delusions involving a fear that people were trying to kill him. Ms Luo raised her concerns with her mother-in-law, but these were minimised and dismissed. The independent expert noted that Ms Luo stayed in the relationship because Mr Zhang provided her with a sense of family and was nice to her after incidents of physical violence. In June 2018, Mr Zhang repeatedly hit Ms Luo with a knife and threatened to stab her if she called for help because he believed he had to kill her to keep himself safe. Ms Luo told the independent expert that she was extremely fearful, too scared to remove the knife from him once he fell asleep, but left their home in the morning and stayed with a friend.
30. The independent expert relied on Ms Luo's report of increasing fear in relation to Mr Zhang's deteriorating mental health and escalating violence towards her which led her to leave the marital home out of concern for her safety. Based on the supporting documentation the independent expert reviewed, her assessment of Ms Luo, and Ms Luo's presentation at the independent expert interview, it is the independent expert's opinion that Ms Luo meets the criteria for family violence according to the Migration Regulations.
31. The Tribunal is satisfied that Dr Emma Collins' independent expert opinion is authorised by the Regulations, in that it is provided by a suitably qualified person for an organisation specified for this purpose and was properly made. Once the Tribunal has determined that the expert's opinion was properly made it is bound to accept it and find in accordance with it,² that is, under r.1.23(10)(c)(ii) the Tribunal must take an independent expert's opinion on the

2Alameddine v MIAC [2010] FMCA 313 (Raphael FM, 23 June 2010) at [25].

matter to be correct for the purposes of deciding whether the applicant satisfies cl.820.221(3)(b)(i).

32. Ms Luo's relationship with Mr Zhang ended as a result of the violence perpetrated by Mr Zhang on 29 June 2018 and the independent expert found that relevant family violence took place during the relationship. Therefore, the violence, or part of the violence, that led to the independent expert having the opinion that Ms Luo has suffered relevant family violence occurred while the married relationship existed between Ms Luo and Mr Zhang: r.1.23(14).
33. Accordingly, the Tribunal finds that Ms Luo is taken to have suffered family violence committed by Mr Zhang for r.1.22 of the Regulations.

Conclusions

34. As the relationship between Ms Luo and Mr Zhang has ceased, and it has no option but to find that Ms Luo has suffered relevant family violence committed by Mr Zhang, Ms Luo meets the requirements of cl.820.221(3)(a) and (b)(i) of the Regulations.
35. Given these findings, the appropriate course is to remit the visa application to the Minister to consider the remaining criteria for the visa.

DECISION

36. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 820 visa:
 - cl.820.221(3) of Schedule 2 to the Regulations.

Mireya Hyland
Member

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

In this Division:

independent expert means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*.

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

- (1) For these Regulations, this regulation explains when:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
 - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
- (a) an application for a visa includes a non-judicially determined claim of family violence; and

- (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.